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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,563	04/06/2001	Marion Calmer	P3098	6406
33512	7590	12/01/2005		
LAW OFFICE OF JAY R. HAMILTON, PLC. 331 W. 3RD ST. NEW VENTURES CENTER SUITE 100 DAVENPORT, IA 52801			EXAMINER PETRAVICK, MEREDITH C	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/827,563

Applicant(s)

CALMER, MARION

Examiner

Meredith C. Petravick

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/19/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Note: Claims 29-37 are the same as previously submitted claims 16-24. Claims 16-24 were previously allowed in the Office Action of 12/16/2003 but were thereafter withdrawn by the examiner. Claims 29-37 represent these claims.

#### ***Claim Objections***

2. Claim 29 is objected to because of the following informalities:

Regarding claim 29, lines 38-39, "the angle of incline plane" should be – the angle of an incline plane--.

Regarding claim 30, the limitation "said auger flighting" lacks antecedent basis in the claims and should be "auger flighting"

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 29-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 29, line 4, the limitation "the functional elements" is unclear since claim 29 previously sets forth functional elements of a row crop harvester attachment and functional

Art Unit: 3671

elements of a mobile threshing unit. It is unclear whether the “functional elements” belong to the row crop harvester attachment, the mobile threshing unit or both.

Regarding claim 29, line 9, the limitation “the stalks” lacks antecedent basis and the limitation “the material including grain” lacks antecedent basis. Further, the remainder of the claim refers to the material as “the harvest material.” For consistency and clarity, the material should all be referred to in the same manner.

Regarding claim 29, line 14, the phrase “comprises a power source for receiving the harvester material from the exits of said first conveyor system” is unclear. It is suggested that “comprises a power source” and “for receiving the harvester material from the exits of said first conveyor system” should be reversed in order.

Regarding claim 29, line 19, the limitation “to an area at the center of the plurality of row units” is unclear. It is suggested that Applicant means “to an area at the center of the auger.”

Regarding claim 29, line 21, the limitation “a third conveyor system including a power source in said mobile threshing unit for retrieving material in said open area and delivering the material to the thresher mechanism” is unclear. It is unclear whether the power source or the third conveyor system is in the mobile threshing unit for retrieving material. It is suggested that commas be placed around “including a power source.”

Regarding claim 29, line 26, the limitation “the entrance of the mobile threshing unit” should be “the entrance of the third conveyor system.”

Regarding claim 29, line 29, the limitation “to an area at the center of the plurality of row units” is unclear. It is suggested that Applicant means “to an area at the center of the auger.”

Art Unit: 3671

Regarding claim 29, line 31, the “the auger trough surface “lacks proper antecedent basis. It is suggested that Applicant means, “a surface of the auger trough section.”

Regarding claim 31, the limitation “to reduce the angle of the horizontal plane” is unclear. A horizontal plane by definition is not at an angle.

Regarding claim 33, the limitation “the feeder plate” lacks antecedent basis in the claim. It is suggested that claim 33 should depend from claim 32.

Regarding claim 35, the limitation “said lateral movement” lacks antecedent basis in the claims. It is suggested that claim 35 should depend from claim 34.

Regarding claim 37, the lateral spacer is defined as being trapezoidal however claims 37 depends from claim 36, which defines the lateral spacer as rectangular. Since the lateral spacer cannot be both trapezoidal and rectangular, it is suggested that claim 37 should depend from claim 35.

5. Note: In the listing of claims filed 9/14/2005, claims 29-37 had incorrect status identifier tag. The status identifier tags should have been “(New).” If in response to this Office Action, Applicant amends any one of the claims 29-37, the status identifier tag for those claims should read “(Currently Amended).” If Applicant does not amend any one of the claims 29-37, the status identifier tag for those claims should read “(Previously Presented).” In either event, Applicant is required to submit a complete listing of all of the claims in response to this Office Action.

***Allowable Subject Matter***

6. Claim 29 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and objections, set forth in this Office action.

7. Claims 30-37 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground of rejection. New claims 29-37 are only rejected based on 35 U.S.C. 112, 2<sup>nd</sup> paragraph above.


***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C. Petravick whose telephone number is 571-272-6995. The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Meredith C Petravick  
Primary Examiner  
Art Unit 3671

November 28, 2005